A.F.R.

2006

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO.5802 OF 2005

PETITIONER Tej Prakash Chandrakar S/o. B.L. Chandrakar, Aged 29 years, R/o. Ward No, 15, Pt. Ravi Shankar Shukla Ward, Mahasamund (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through : Collector, Mahasamund (C.G.)
2. Superintendent of Police, Mahasamund, Dist Mahasamund (C.G.)
3. Municipal Council Mahasamund, Through its Chief Municipal Officer, Mahasamund, Dist – Mahasamund (C.G.)
4. Reliance Infocom Limited (A registered company under the Companies Act 1956) Head Office Block No. G.F.1, Village Meghpar Padana Taluka Lalpur, District Jamnagar (Gujrat), 369280 State Office – 77, Prashanti Tower, M.P. Nagar Zone 2, Bhopal, through its authorized signatory Shri Ramji Singh Thakur, Aged about 26 years, S/o. Shri B.S. Thakur, Third Story Millennium Plaza, behind Indian Coffee House, Raipur, Tahsil and Distt. Raipur (C.G.)
5. Superintendent Record, Revenue Department, Office of Tahsildar, Mahasamund, Tahsil and Distt. Mahasamund (C.G.)
6. Sub-Divisional Officer (Revenue) Mahasamund, Tahsil and Distt. Mahasamund (C.G.)
7. Tahsildar, Mahasamund, Tahsil and Distt. Mahasamund (C.G.)
8. Mr. Diwan, Halka Patwari, Halka No. 142, Mahasamund, Tahsil and Dist. Mahasamund (C.G.)

Present: Mr. Manoj Paranjpe, learned counsel for the petitioner.
Mr. V.V.S. Murthy, learned Dy. A.G. for the State / respondents No. 1,2 and 5 to 7.
Mr. B.P. Sharma, learned counsel for respondent No. 4.

WRIT PETITION NO. 6167 OF 2005

PETITIONER Harbansh Singh S/o Late Ranjit Singh, aged about 36 years, Councilor of Ward No. 9, Mahasamund, resident of near F.C.I. Mahasamund, Tahsil and District Mahasamund (CG)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through, Collector, Mahasamund (C.G.)
2. Superintendent of Police, Mahasamund, District Mahasamund (C.G.)
3. Municipal Council Mahasamund, Through its Chief Municipal Officer, Mahasamund, District – Mahasamund (C.G.)
4. Reliance Infocom Limited (A registered company under the Companies Act 1956) Head Office Block No. G.F.1, Village Meghpar Padana Taluka Lalpur, District Jamnagar (Gujrat), 369280 State Office – 77, Prashanti Tower, M.P. Nagar Zone 2, Bhopal, through its authorized signatory Shri Ramji Singh Thakur, Aged about 26 years, S/o. Shri B.S. Thakur, 3rd Story Millennium Plaza, behind Indian Coffee House, Raipur, Tahsil and District Raipur (C.G.)
5. Superintendent Record, Revenue Department, Office of Tahsildar, Mahasamund, Tahsil and District Mahasamund (CG.)
6. Sub-Divisional Officer (Revenue) Mahasamund, Tahsil and District. Mahasamund (CG.)
7. Tahsildar, Mahasamund, Tahsil and District Mahasamund (CG.)
8. Mr. Diwan,Halka Patwari, Halka No. 142, Mahasamund, Tahsil and District Mahasamund (CG.)

Present: Mr. Sunil Sahu, learned counsel for the petitioner.

Mr. V.V.S. Murthy, learned Dy. A.G. for the State / respondents No. 1,2 and 5 to 7.

Mr. B.P. Sharma, learned counsel for respondent No. 4.

ORAL ORDER
(Passed on 30th January 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ :

In these writ petitions filed as Public Interest Litigations, mainly two reliefs are sought. They are:

I. A direction to the State Authorities to allot the open Abadi land bearing Khasra No. 1198 and 1199 to the Government Ganjpara School, Abhyas Kanya Shala and Adarsh Kanya High School for the playground and;

II. An injunction restraining the 4th respondent from constructing the tower in a land not belonging to it.

(2) Opposing the writ petitions, respondents 1, 2 and 5 to 7 have filed reply. Respondent No. 4 has also filed separate reply. In para 3 of the reply, respondents 1, 2,5,6 & 7, have stated that the 4th respondent is erecting tower in Khasra No. 1198 and 1199. In para 10 of the reply thereof, it is quite curiously stated that 4th respondent have started digging a part of Khasra No. 1205 purchased by him and not Khasra Nos. 1198 and 1199. In para 13 of the reply, an attempt is made by the respondents 1,2,5,6 & 7 to show that how the land over which the 4th respondent has proposed to erect a tower does not form part of Khasra Nos. 1198 and 1199, but, it is a part of Khasra No. 1205. Admittedly, Khasra Nos. 1198 and 1199 is a Government land. Whether those

lands should be made available to the two schools which are said to be Government Schools, it is for the concerned authorities to appreciate the need of the school management and grant the land required by the schools. The petitioners who claim to be *pro bono* public characters have utterly failed to make out any ground that the State Authorities, as a matter of legal obligation, should make available the land comprised in Khasra Nos. 1198 and 1199 to the schools. Therefore, that part of the relief cannot be granted at all.

(3) This takes us to the 2nd main relief of injunction sought against the 4th respondent restraining him from constructing the tower. It is quite often said and reiterated that Article 226 is meant essentially to enforce an established right and not to establish a right. The pleadings of the parties filed in this case would make it abundantly clear that there are many factual controversies with regard to the land in which the tower is sought to be erected, the ownership thereof, on the question whether the required licence has been obtained or not etc. This Court cannot be converted into a Civil Court to undertake resolution of disputed facts. The dispute brought before the Court is not a fit case which could persuade us to step-in under Article 226 of the Constitution of India and undertake resolution of the disputed facts. In order to grant relief of injunction in favour of the petitioners, it becomes absolutely necessary for the Court to permit the parties to lead evidence and tender witnesses that may be examined by the parties to be cross-examined by each other. If this procedure is not adhered to in adjudication and decision-making, there is every likelihood of failure of justice. The dispute brought before this Court cannot be decided on the basis of affidavits

and counter-affidavits only. Moreover, it needs to be noticed that the petitioners are not claiming any relief to themselves and they have come to this Court as *pro bono* public characters. Furthermore, the dispute brought before the Court is a dispute between two departments of the State Government. It is for the concerned departments to workout an amicable settlement, appreciating the need of the school management for the land in Khasra Nos. 1198 and 1199. It is not that the departments are not in a position to appreciate the need of the schools and do right thing for the schools. The Government schools cannot be regarded as orphans whose case should be espoused by persons like the petitioners who are said to be Counsellors. The writ petitions are, therefore, dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Subba